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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,028	01/29/2004	John D. Unsworth		1113

7590 03/14/2006  
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EXAMINER

RODRIGUEZ, RUTH C

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.		Applicant(s)	
	10/766,028		UNSWORTH ET AL.	
	Examiner		Art Unit	
	Ruth C. Rodriguez		3677	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/24/04</u>   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Priority***

1. Applicant's claim for domestic priority under 35 U.S.C. 120 is acknowledged.

### ***Information Disclosure Statement***

2. The information disclosure statement filed 24 January 2004 has been considered for this Office Action.

### ***Drawings***

3. The drawings are objected to because although the reference character 5a is included in Figure 12c with its leading line, the figure does not illustrate a proximal thread.
4. The drawings are objected to under 37 CFR 1.84(h)(5) because Figures 2 and 7 show(s) modified forms of construction in the same view.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

5. The disclosure is objected to because of the following informalities:
  - Page 5, line 14, "the said" should be replaced with --the-- or --said--.
  - Page 5, line 22, "the said" should be replaced with --the-- or --said--.
  - Page 6, line 12, "it's" should be replaced with --its--.
  - Page 6, line 16, "by" should be replaced with --be--.
  - Page 7, line 2, "the said" should be replaced with --the-- or --said--.
  - Page 8, line 11, "the said" should be replaced with --the-- or --said--.
  - Page 9, line 11, "The" should be replaced with --the--.

- Page 9, lines 18 and between lines 25 and 26, "the said" should be replaced with --the-- or --said--.
  - Page 14, line 3, "the said" should be replaced with --the-- or --said--.
  - Page 18, line 9, "the said" should be replaced with --the-- or --said--.
  - Page 19, line 7, "The said" should be replaced with --The-- or --Said--.
  - Page 24, line 9, "17b" should be replaced with --17a--.
  - Page 24, line 12, "the said" should be replaced with --the-- or --said--.
  - Page 25, line 1, "the said" should be replaced with --the-- or --said--.
  - Page 25, line 25, a period is required at the end of the sentence.
  - Page 25, line 26, "There" should be replaced with --These--.
  - Page 26, lines 26 and 27, "the said" should be replaced with --the-- or --said--.
  - Page 27, line 5, "the said" should be replaced with --the-- or --said--.
- Correction is required.

### ***Double Patenting***

6. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re*

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*Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-6, 8, 9, 12, 13, 16-21 and 24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 and 16-19 of U.S. Patent No. 6,494,657 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim an expandable fastener comprising a threaded fastener having a shank extending from a head of the fastener where the shank has double interleaved helical threads that engage a continuous helical coil member disposed in between the double interleaved helical threads. In the case of claim 1, a releasable securing means is provided to secure the coil member to the interleaved helical threads until the expandable fastener is inserted into a substrate. For claim 24, insertion of the fastener assembly into a substrate causes the unlatching of the coil member from the interleaved helical threads since the coil member will twist about its pivot axis due to the contact of its radially

inward portion of the coil with a radially inward surface of the second surface of a distal thread of the helical threads that moves the radially outward portion of the coil away from the radially outward surface of the helical threads.

8. Claims 1-9, 13-20 and 23-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, 7-9, 13-20 and 23-25 of U.S. Patent No. 6,494,657 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim an expandable fastener comprising a threaded fastener having a shank extending from a head of the fastener where the shank has double interleaved helical threads that engage a continuous helical coil member disposed in between the double interleaved helical threads. In the case of claim 1, a releasable securing means is provided to secure the coil member to the interleaved helical threads until the expandable fastener is inserted into a substrate. For claim 24, insertion of the fastener assembly into a substrate causes the unlatching of the coil member from the interleaved helical threads since the coil member will twist about its pivot axis due to the contact of its radially inward portion of the coil with a radially inward surface of the second surface of a distal thread of the helical threads that moves the radially outward portion of the coil away from the radially outward surface of the helical threads.

### ***Claim Objections***

9. Claims 7, 22 and 24 are objected to because of the following informalities:

- Claim 7, line 3, reference character "21a" should be deleted or included in parenthesis.

- Claim 22 contains the trademark/trade name Teflon. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe non-stick surface and, accordingly, the identification/description is indefinite.

- Claim 24, recites the limitation "the first surface" in line 23. There is insufficient antecedent basis for this limitation in the claim.

- Claim 24, recites the limitation "the radially inward surface" in line 26. There is insufficient antecedent basis for this limitation in the claim.

- Claim 24, line 27, "surface" should be replaced with --portion--.

- Claim 24, line 27, "outward" should be replaced with --outwardly facing--.

- Claim 24, recites the limitation "the first surface" in line 27. There is insufficient antecedent basis for this limitation in the claim.

- Claim 24, recites the limitation "the radially outward portion" between lines 27 and 28. There is insufficient antecedent basis for this limitation in the claim.



- Claim 24, line 28, "thread." should be replaced with --thread--.
- Claim 24, line 28, the limitation "that surface" render the claim unclear

because there are several surfaces being recited in the claim.

Correction is required.

***Allowable Subject Matter***

10. Claims 1-24 are allowed.

11. The following is an examiner's statement of reasons for allowance:

For claim 1, Lerich discloses an expandable fastener assembly comprising a threaded fastener, a continuous expandable helical coil member and releasably securing means. The treaded fastener has a head and a shank extending. The head has a helical threads extending radially outwardly from the shank. The helical coil member winds around the shank and is located between the threads. A thread-contacting surface generally faces one of the ends of the fastener. However, Lerich fails to disclose that shank has a pair of interleaved helical threads extending radially outwardly from the shank and that assembly comprises releasable securing means releasably securing the coil member in its radially compressed form to the shank of the fastener the coil member. Therefore, it would not have been obvious to one having ordinary skill in the art at the time the invention was made to have a pair of interleaved helical threads extending outwardly from the shank and to have a releasable securing means releasably securing the coil member in its radially compressed form to the shank

of the fastener the coil member where the securing means maintains the coil member in its radially compressed form at least until the coil member is substantially completely threaded into the substrate.

Regarding claim 24, the same reasons for allowance of claim 1 apply to claim 24. Claim 24 recites additional details on how the coil member is released by having a pivot axis on the thread engaging portion of the coil member where the coil member is unlatched by twisting about the pivot axis after contacting the substrate and by combining with complementary shapes of the thread-contacting surface of the coil member. By unlatching, the coil member moves towards the distal end of the fastener to bias the fastener into the substrate. Therefore, it would not have been obvious to one having ordinary skill in the art at the time of applicant's invention to bias the coil member against the substrate by twisting the coil member about the pivot axis and in combination with complementary shapes of the thread-contacting surface of the coil member.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bereza (US 2,520,232), Textrom (US 3,515,027), King, Jr.(US 3,983,736), Breed (US 4,040,326), Reece et al. (US 4,712,955), Morton (US 5,312,214), Krenzer et al. (US 5,820,316), Tseng (US 5,961,266 and US 6,461,092 B2) and Unsworth et al. (US 6,276,883 B1, US 6,494,657 B2 and US 6,860,691 B2) are cited to show state of the art with respect to fasteners having a threaded member in combination with a coil spring that is disposed between the threads of the threaded member that and having some or most of the features being claimed by the current application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C Rodriguez whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.

Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase the patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as PTO's mailroom processing and delivery time. For a complete list of correspondence **not** permitted by

facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee that the applicant is paying by check **should not be** submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to  
the Patent and Trademark Office (Fax No. (571) 273-8300) on     (Date)    .

\_\_\_\_\_  
(Typed or printed name of person signing this certificate)

\_\_\_\_\_  
(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response has been transmitted by facsimile will cause further unnecessary delays in the processing of your application, duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ruth C. Rodriguez  
Patent Examiner  
Art Unit 3677

rcr  
March 6, 2006

  
**ROBERT J. SANDY**  
**PRIMARY EXAMINER**